

HOUSE BILL No. 1653

DIGEST OF INTRODUCED BILL

Citations Affected: IC 28-1; IC 28-6.1-6-22.5; IC 28-10-1-1; IC 28-15-2-1.5.

Synopsis: Financial institutions. Allows a bank to sell life insurance or an annuity issued by a life insurance company in any state in which the bank operates. Specifies requirements for an Indiana bank that sells life insurance or annuities. Changes the requirements for filing a statement of condition by a bank. Prohibits a savings bank or savings association acting as a fiduciary from receiving a commission or profit as part of a transaction involving an estate, guardianship, or trust.

Effective: January 1, 2003 (retroactive); July 1, 2003.

Bardon

January 21, 2003, read first time and referred to Committee on Financial Institutions.

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First Regular Session 113th General Assembly (2003)

PRINTING CODE. Amendments: Whenever an existing statute (or a section of the Indiana Constitution) is being amended, the text of the existing provision will appear in this style type, additions will appear in **this style type**, and deletions will appear in ~~this style type~~.

Additions: Whenever a new statutory provision is being enacted (or a new constitutional provision adopted), the text of the new provision will appear in **this style type**. Also, the word **NEW** will appear in that style type in the introductory clause of each SECTION that adds a new provision to the Indiana Code or the Indiana Constitution.

Conflict reconciliation: Text in a statute in *this style type* or ~~this style type~~ reconciles conflicts between statutes enacted by the 2002 Regular or Special Session of the General Assembly.

HOUSE BILL No. 1653

A BILL FOR AN ACT to amend the Indiana Code concerning financial institutions.

Be it enacted by the General Assembly of the State of Indiana:

- 1 SECTION 1. IC 28-1-11-2.5, AS AMENDED BY P.L.130-2002,
2 SECTION 5, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
3 JULY 1, 2003]: Sec. 2.5. (a) A bank or trust company may act as an
4 agent for the sale of any life insurance policy or annuity contract issued
5 by a life insurance company ~~(as defined in IC 27-1-2-3)~~ authorized to
6 do business in ~~Indiana under IC 27-1-~~ **any state in which the agent**
7 **operates.**
8 (b) A bank or trust company that acts as an agent for the sale of a
9 life insurance policy or an annuity contract **in Indiana:**
10 (1) is subject to all requirements of IC 27; and
11 (2) must comply with the disclosure requirements under
12 IC 27-1-38.
13 (c) A bank or trust company may not condition:
14 (1) an extension of credit;
15 (2) a lease or sale of real or personal property;
16 (3) the performance of services; or
17 (4) the amount charged for:



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1 (A) extending credit;

2 (B) leasing or selling real or personal property; or

3 (C) performing services;

4 upon a person's purchase of a life insurance policy or an annuity
5 contract from the bank or trust company or an affiliate (as defined in
6 IC 28-2-13-3) of the bank or trust company.

7 (d) This section does not prohibit a bank or trust company from
8 requiring that a person, as a condition to a transaction, obtain a life
9 insurance policy from an insurance company acceptable to the bank or
10 trust company.

11 SECTION 2. IC 28-1-11-4 IS AMENDED TO READ AS
12 FOLLOWS [EFFECTIVE JULY 1, 2003]: Sec. 4. (a) Except as
13 otherwise provided in this article, the business of dealing in investment
14 securities by any bank or trust company is limited to purchasing and
15 selling securities without recourse, solely upon the order and for the
16 account of customers and in no event for its own account. A bank or
17 trust company may not underwrite or guarantee all or any part of any
18 issue of securities other than obligations issued or guaranteed by or on
19 behalf of the state or any political subdivision of the state or any agency
20 or instrumentality of either. A bank or trust company may purchase for
21 its own account and sell investment securities under such limitations
22 and restrictions as the department prescribes by rule, but in no event
23 may the total amount of the investment securities of any one (1) obligor
24 or maker, purchased or held by a bank or trust company for its own
25 account, exceed at any time ten percent (10%) of the amount of the
26 total equity capital of the bank or trust company. The limitations
27 imposed by this section do not apply to the direct or indirect obligations
28 of the United States or the direct obligations of a United States territory
29 or insular possession or of the state of Indiana or any municipal
30 corporation or taxing district in Indiana. A bank or trust company may
31 purchase for its own account and sell shares of stock in federal or state
32 chartered small business investment companies that have received a
33 permit or license to operate under the federal Small Business
34 Investment Act (15 U.S.C. 681). However, a bank or trust company
35 may not acquire shares in any small business investment company if,
36 upon the making of that acquisition, the aggregate amount of shares in
37 small business investment companies then held by the bank would
38 exceed five percent (5%) of its total equity capital.

39 (b) A bank or trust company may purchase for its own account and
40 sell:

41 (1) shares of open-end investment companies the portfolios of
42 which consist solely of securities that are eligible for purchase

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and sale by national banking associations; and

(2) **collateralized** obligations ~~commonly known as collateralized mortgage obligations~~, that are eligible for purchase and sale by national banking associations. However, a bank or trust company may purchase for its own account and sell the obligations only to the extent that a national banking association can purchase and sell those obligations.

(c) A bank or trust company may deposit its funds in:

(1) a federally chartered savings association; or

(2) a savings association or other entity organized and operated according to federal law or the laws of any state or the District of Columbia;

the accounts of which are insured by the Saving Association Insurance Fund of the Federal Deposit Insurance Corporation.

(d) A bank or trust company may not purchase for its own account any bond, note, or other evidence of indebtedness that is commonly designated as a security that is speculative in character or that has speculative characteristics. For the purposes of this subsection, a security is speculative or has speculative characteristics if at the time of purchase the security:

(1) is rated below the first four (4) rating classes by a generally recognized security rating service; or

(2) is in default.

(e) A bank or trust company may purchase for its own account a security that is not rated by a generally recognized security rating service if the bank or trust company at the time of purchase obtains financial information that is adequate to document the investment quality of the security.

(f) Except as otherwise authorized by this title, a bank or trust company may not purchase any share of stock of a corporation that is not a subsidiary of that bank or trust company unless the purchase is considered expedient to prevent loss from a debt previously contracted in good faith. Any shares of stock thus acquired by a bank or trust company that would not have been eligible for purchase shall be sold and disposed of within six (6) months from the date of acquisition unless the director grants an extension of time for the sale and disposition.

(g) Notwithstanding any other provision of this article, a bank or trust company may purchase for its own account shares of stock of a banker's bank insured by the Bank Insurance Fund of the Federal Deposit Insurance Corporation or a holding company that owns or controls a banker's bank insured by the Bank Insurance Fund of the

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1 Federal Deposit Insurance Corporation. For the purposes of this
2 subsection, a "banker's bank" is a bank (as defined in IC 28-2-14-2):

3 (1) the stock of which is owned exclusively by other banks (as
4 defined in IC 28-2-14-2), or by a bank holding company the stock
5 of which is owned exclusively by other banks (as defined in
6 IC 28-2-14-2); and

7 (2) that is engaged exclusively in providing services to other
8 banks (as defined in IC 28-2-14-2), and to their officers, directors,
9 and employees.

10 A bank's or trust company's holdings of the stock of an insured banker's
11 bank or of a holding company that owns or controls an insured banker's
12 bank may not exceed ten percent (10%) of the capital and surplus of
13 the bank or trust company. A bank or trust company may not purchase
14 the stock of an insured banker's bank or of a holding company that
15 owns or controls an insured banker's bank if, after the purchase, the
16 bank or trust company would own more than five percent (5%) of any
17 class of voting securities of the banker's bank or holding company.

18 (h) Notwithstanding any other provision of this article, a bank or
19 trust company may invest in a casualty insurance company organized
20 solely for the purpose of insuring banks, trust companies, and bank
21 holding companies and their officers and directors from and against
22 liabilities, including those covered by bankers' blanket bonds and
23 director and officer liability insurance and other public liability
24 insurance. The investment must take the form of:

25 (1) the purchase for the bank's or trust company's own account of
26 shares of stock of the casualty insurance company or shares of
27 stock of an association of banks organized for the purpose of
28 funding the casualty insurance company; or

29 (2) loans to such an association of banks.

30 The total investment of any bank or trust company under this
31 subsection may not exceed five percent (5%) of the capital and surplus
32 of the bank or trust company.

33 (i) Any bank or trust company may establish or acquire a subsidiary
34 that engages in:

35 (1) the sale, distribution, or underwriting of securities issued by
36 investment companies (as defined in Section 3 of the Investment
37 Company Act of 1940 (15 U.S.C. 80a-3); or

38 (2) the underwriting or distribution of securities backed by or
39 representing an interest in mortgages.

40 (j) As used in this section, "total equity capital" means unimpaired
41 capital stock, unimpaired surplus, unimpaired undivided profits,
42 subordinated debt that has been approved by the state or federal

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regulatory agencies, and one hundred percent (100%) of loan reserves.

(k) The department may define an investment security by department policy or by rule.

(l) A bank or trust company may establish a trading account for the purchase and resale of securities that are otherwise eligible for purchase or resale by the bank or trust company. The trading account must comply with the requirements established by policy or rule of the department.

(m) A bank or trust company that purchases a security for its own account shall maintain sufficient records of the security to allow the security to be properly identified by the department for examination purposes.

SECTION 3. IC 28-1-15-1 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2003]: Sec. 1. ~~(a)~~ The department may require every bank and trust company to prepare, submit and publish as many statements of condition as may be deemed necessary, in any year, but not less than as many as are called for from and required to be published by the national banks by the comptroller of the currency of the United States, unless the comptroller of the currency shall call for more than two (2) such four (4) statements during any year. Such statements of condition shall be verified and shall be prepared and submitted according to the forms and pursuant to such notice and on such dates as the department may designate. In addition to such other information as the department, under its general rules and regulations, shall require banks and trust companies to submit in their statements of condition, the following items shall be exhibited in detail and under appropriate heads, and as of a day certain, specified by the department in its notice:

(1) The resources and liabilities of such bank or trust company; and, except as provided in item (2) of this subsection, excluding therefrom all other property held in trust.

(2) The uninvested funds held in any fiduciary capacity. Such uninvested funds shall be denominated "first lien trust funds."

(3) All shares of affiliated companies which are carried as assets.

(4) All loans to affiliated companies which are carried as assets.

(b) The items enumerated in subsections (2), (3) and (4) of this section shall be segregated from the statement of resources and liabilities of such bank or trust company under such appropriate title as will clearly designate their character and amount to the public.

SECTION 4. IC 28-6.1-6-22.5 IS ADDED TO THE INDIANA CODE AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2003]: **Sec. 22.5. (a) Except for interest at the**

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1 legal rate on a loan or advancement, a savings bank may not,
 2 directly or indirectly, receive a profit or commission from the sale
 3 to or purchase from an estate, a guardianship, or a trust of which
 4 the savings bank is the fiduciary unless the profit or commission is
 5 authorized by agreement with the creator of the trust or a court
 6 with jurisdiction over the estate, guardianship, or trust.

7 (b) A savings bank that receives a profit or commission in
 8 violation of subsection (a) shall be surcharged an amount equal to
 9 the profit or commission. In addition, a court with jurisdiction over
 10 the estate, guardianship, or trust may remove the savings bank as
 11 the fiduciary.

12 SECTION 5. IC 28-10-1-1, AS AMENDED BY P.L.82-2002,
 13 SECTION 2, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
 14 JANUARY 1, 2003 (RETROACTIVE)]: Sec. 1. A reference to a
 15 federal law or federal regulation in IC 28 is a reference to the law or
 16 regulation in effect January 1, ~~2002~~: 2003.

17 SECTION 6. IC 28-15-2-1.5 IS ADDED TO THE INDIANA CODE
 18 AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE JULY
 19 1, 2003]: Sec. 1.5. (a) Except for interest at the legal rate on a loan
 20 or advancement, a savings association may not, directly or
 21 indirectly, receive a profit or commission from the sale to or
 22 purchase from an estate, a guardianship, or a trust of which the
 23 savings association is the fiduciary unless the profit or commission
 24 is authorized by agreement with the creator of the trust or a court
 25 with jurisdiction over the estate, guardianship, or trust.

26 (b) A savings association that receives a profit or commission in
 27 violation of subsection (a) shall be surcharged an amount equal to
 28 the profit or commission. In addition, a court with jurisdiction over
 29 the estate, guardianship, or trust may remove the savings
 30 association as the fiduciary.

31 SECTION 7. An emergency is declared for this act.

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